

**DECISION MEMORANDUM**  
**Cochise County; Old Divide Road Temporary Use Permit**  
**DOI-BLM-AZ-G020-2014-0022-CX**  
**AZA-036563**

U.S. Department of the Interior  
Bureau of Land Management  
Tucson Field Office

**Project Description**

On July 10, 2014, the Cochise County Highway and Floodplain Division filed an application for a Temporary Use Permit (TUP) to repair Old Divide Road, which is approximately 1 mile northwest of the town of Bisbee, AZ. The purpose of this TUP issuance is for the repair, installation and replacement of essential erosion control structures; and construction of culverts along the road. Recently, a fire caused by the Arizona Department of Transportation (ADOT) in this area damaged the BLM lands. This has resulted in flood damage to Old Divide Road. ADOT has awarded Cochise County with settlement funds to repair the road. The County is requesting a time frame of twelve months to complete the construction, with 3 of those months being when active construction takes place.

The TUP would involve the following activities: repair of culvert and erosion control construction in two areas, totaling @ 1 acre. The project encompasses 2 small areas, which combined would be less than 0.25 of one acre, falling within:

T.23 S., R. 24 E.,  
Sec. 6, lot 13.

The proposed action for the TUP also qualifies as a CX under Departmental Manual 516, Chapter 11, Section I.1 that reads, "Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management approved condition as a result of the event. Such activities shall be limited to: repair and installation of essential erosion control structures; replacement or repair of existing culverts, roads..."

On August 7, 2014, the Tucson Field Office Archaeologist did a review and records search on cultural issues of the area, and has attached recommended stipulations.

An active & authorized record search was done on the area on July 30, 2014. There are no active mining claims. The area is located within the Susnow and Wildcat Canyon Grazing Allotments. These allotments are not expected to be an issue for the TUP or vice-versa.

A wildlife survey for threatened and endangered species was conducted on August 7, 2014, and the biologist has recommended special stipulations, which are attached.

Special stipulations regarding the biological resources and maintenance of the road will be part of this Temporary-Use-Permit issuance. The permit will be issued for a three year term with the right of renewal under Title V of FLPMA.

**Approval and Decision**

Based on a review of the project described in the attached Categorical Exclusion documentation and field office staff recommendations, I have determined that the project is in conformance with the Safford District Resource Management Plan (RMP), Page 22: "Rights-of-Way, leases and permits will be considered on a case-by-case basis, in accordance with the decision of the Resource Management Plan."

(approved August 1991; 2) 6-16-1988) and is categorically excluded from further environmental analysis. It is my decision to approve the action as proposed with the attached stipulations.

### **Administrative Review or Appeal Opportunities**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1, which can be found in the Tucson Field Office. If an appeal is taken, your notice of appeal must be filed at Tucson Field Office, 3201 E Universal Way, Tucson AZ 85756 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Court House #404, 401 West Washington Street SPC44, Phoenix, AZ 85003-2151) (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

#### Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

/s/Viola Hillman  
Viola Hillman, Tucson Field Office Manager

09/10/2014  
Date

Attachment: Stipulations, Exhibit A.2